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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,481	04/25/2002	Gayle Marie Frankenbach	7679	1755

27752 7590 05/14/2004

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
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CINCINNATI, OH 45224

EXAMINER
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PENG, KUO LIANG

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/031,481	FRANKENBACH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kuo-Liang Peng	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 3/1/04 Response.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-19, 21-24 and 27 is/are rejected.
- 7) ☒ Claim(s) 20, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's election without traverse of the invention of Group I in the response to restriction requirement filed on March 1, 2004 is acknowledged. Claims 28-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse, *supra*. Claims 28-47 have been subsequently deleted. Now, Claims 17-27 are pending.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18-19, 22-23 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claims 18-19, 22-23 and 27, it is not clear as to the scope of conventional nonionic surfactant.

Claim 19 recites the limitations "said nonionic silicone surfactant", "conventional nonionic surfactant" and "said ionic surfactant". There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17 and 21 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Colurciello (US 6 221 833).

Colurciello discloses a silicone emulsion composition comprising a silicone oil, an emulsifying agent, surfactants, water, fragrance adjuvants, biocides, etc. (col. 2, lines 26-50, col. 3, line 5 to col. 4, line 32, col. 5, line 15 to col. 6, line 48 and Examples). The composition further comprises a buffer system. The silicone oil can be used in an amount of about 5% to less than about 10 wt% (col. 4, lines 22-32). Most preferably, the emulsion composition has a pH value of between about 7.0 to 7.75. (col. 4, lines 33-58 and col. 7, lines 28-40). Colurciello

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further teaches that one of the function of the buffer system is to ionize the acidic side chains of the carboxypolyalkylene emulsifier which is an essential to the stability of the emulsion composition. The emulsion compositions can be shelf-stable for months. (col. 5, lines 15-39, col. 7, lines 28-36 and Examples). Therefore, Colurciello's buffer system should maintain a pH of the composition for a period of months. Colurciello does not explicitly mention that the pH is maintain for a period of at least about 3 months. However, since Colurciello's composition is substantially the same as Applicants' composition, Examiner has a reasonable basis to believe that both buffer systems should maintain a pH for the same period. Alternatively, it is noted that maintaining the pH value to a desired period is critical to the stability of the emulsion during said period. In other words, the period during which the pH value needs to be maintained is a Result-Effective variable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made, to maintain the pH of the emulsion for whatever period through routine experimentation in order to afford an emulsion composition having a shelf-stability for said period. Especially Applicants do not show the criticality of the period during which the pH is maintained. See MPEP 2144.05 (II).

For Claim 21, 0.2% of Nuocept 95 (an antimicrobial) can be used (Table 1).

7. Claim 24 is rejected under 35 U.S.C. 103(a) as obvious over Colurciello.

Colurciello is silent on the buffering capacity of the buffer system. However, it would have been obvious to one of ordinary skill in the art at the time of invention was made to utilize a buffer system having whatever buffering capacity through routine experimentation in order to

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obtain a desirable composition. Especially, Applicants do not show the criticality of the buffering capacity.

8. Claims 18-19, 22-23 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Celluriello does not teach or fairly suggest the use of a) the specific buffer system set forth in Claims 18 and 27; and b) the specific surfactant system set forth in Claims 19 and 27.

9. Claims 20 and 25-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The patentability of the instant claims is described in the previous paragraph.

10. The "X" references cited in the international search report are not relied upon because of the following reasons:

None of US 3 968 042, US 4 020 212 and WO 92 19671 does not teach or fairly suggest the amount of the silicone oil in the present invention.

11. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuo-Liang Peng whose telephone number is (571) 272-1091.

The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

klp  
May 10, 2004

  
Kuo-Liang Peng  
Primary Examiner  
Art Unit 1712